

**DRAFT
ENVIRONMENTAL ASSESSMENT**

for the

**Wild River Conservation Easement
Project**



January 29, 2020



MEPA, NEPA, MCA 23-1-110 CHECKLIST

PART I. PROPOSED ACTION DESCRIPTION

1. Type of proposed state action:

Montana Fish, Wildlife and Parks (FWP) proposes the purchase of a conservation easement on property owned by the Vital Ground Foundation (Vital Ground) to protect approximately 50 acres of important fish and wildlife habitat along the Kootenai River just northwest of Troy, Montana (Fig. 1). Purchase of the conservation easement would be funded by a U.S. Fish and Wildlife Service Recovery Land Acquisition Grant in the amount of \$374,500 with Vital Ground matching this grant by 50% through a below-market sale of the conservation easement.

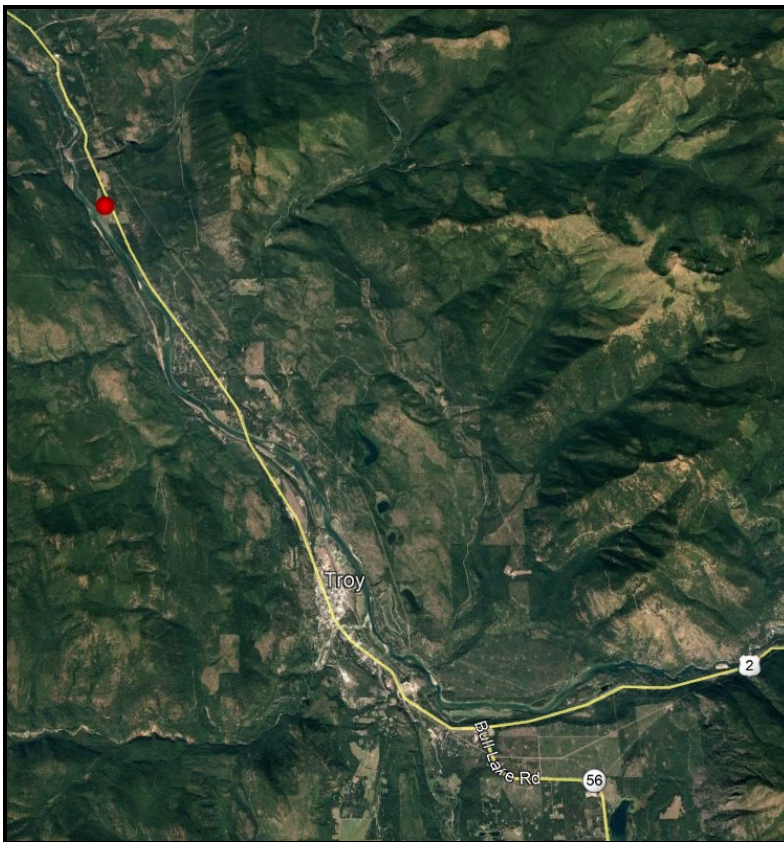


Figure 1. Location of Wild River Conservation Easement property (red dot) just northwest of Troy, MT and upstream of the confluence with the Yaak River.

2. Agency authority for the proposed action:

Montana State Statutes: Section 76-6-201 MCA authorizes the application of conservation easements to protect "significant open-space land and/or the preservation of native plants or animals, biotic communities, or geological or geographical formations of scientific, aesthetic, or educational interest." Section 76-6-206 MCA provides for the review of proposed conservation easements by local planning authorities to determine compliance

with local growth policies. The proposed conservation easement will be submitted to Lincoln County in accordance with this requirement.

3. Anticipated Schedule:

Public comment period: January 29 – February 17, 2020

Decision notice published: February 21, 2020

Review by FWP Fish and Wildlife Commission: April 23, 2020

4. Location:

The property is located between Highway 2 and the Kootenai River in Lincoln County, Montana in Township 32 North, Range 34 West, Section 9 (Fig. 2).

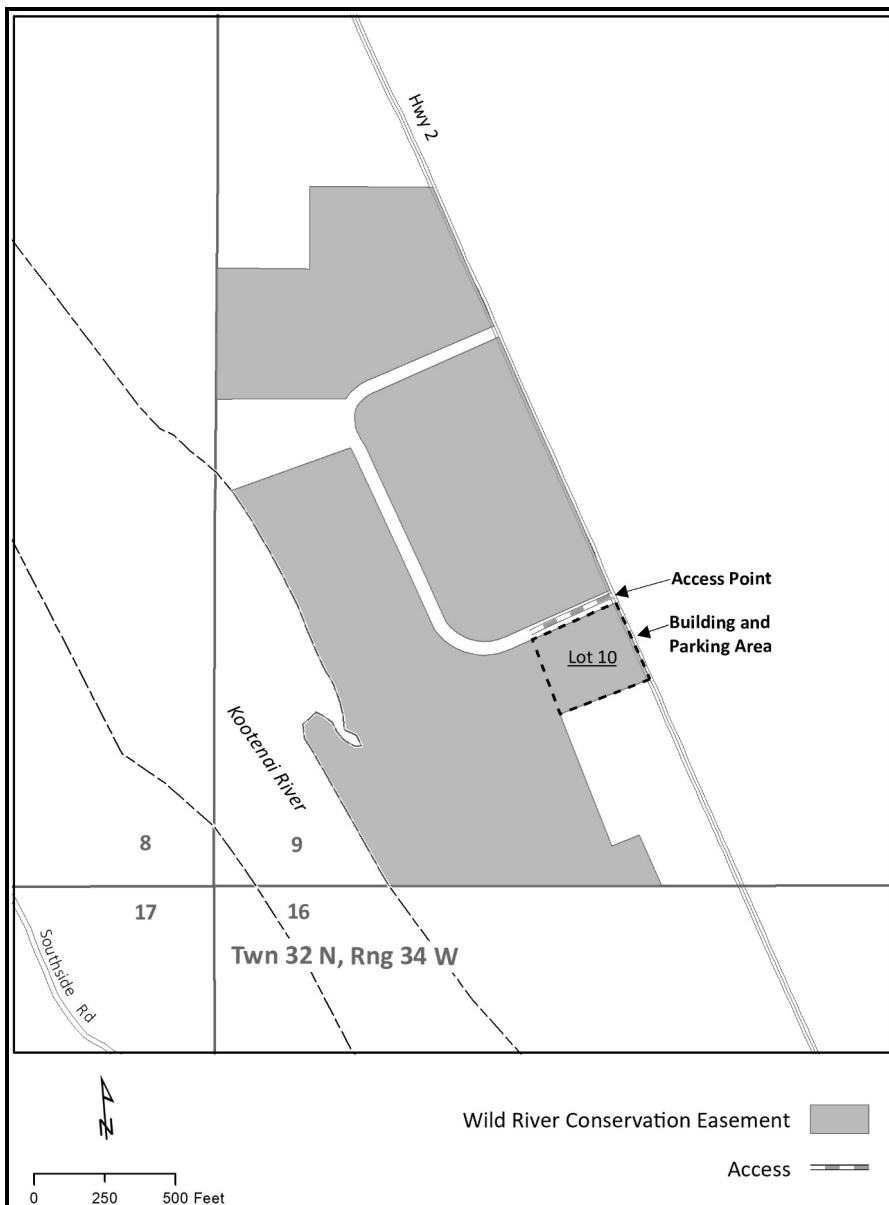


Figure 2. Detail of the Wild River Conservation Easement property.

5. Project size:

	<u>Acres</u>		<u>Acres</u>
(a) Developed:		(d) Floodplain	<u>8*</u>
Residential	<u>0</u>		
Industrial	<u>0</u>	(e) Productive:	
		Irrigated cropland	<u>0</u>
(b) Open Space/	<u>42*</u>	Dry cropland	<u>0</u>
Woodlands/Recreation		Forestry	<u>0</u>
(c) Riparian/Wetland	<u>8*</u>	Rangeland	<u>0</u>
Areas		Other	<u>0</u>

* Approximate acreages

6. Local, State or Federal agencies with overlapping or additional jurisdiction:

(a) **Permits:** No permits required.

(b) **Funding:**

<u>Agency Name</u>	<u>Funding Amount</u>
U.S. Fish and Wildlife Recovery Land Acquisition Grant	\$374,500

(c) **Other Overlapping or Additional Jurisdictional Responsibilities**

<u>Agency Name</u>	<u>Type of Responsibility</u>
U.S. Fish and Wildlife Service	Threatened and Endangered Species
Lincoln County	Lincoln County Growth Policy

7. Narrative summary of the proposed action:

Montana Fish, Wildlife and Parks proposes to purchase a conservation easement on approximately 50 acres along the Kootenai River between the Yaak River confluence and the town of Troy, Montana. The property is owned by The Vital Ground Foundation (Vital Ground), who has been working over the last several years to purchase this property and protect it from residential development. The project is part of an area identified by grizzly bear scientists as the best linkage between the Purcell and Cabinet Mountains in the Cabinet-Yaak recovery area (Fig. 3). FWP conserved a large portion of this linkage in 2012 with our 28,000-acre Kootenai Valleys conservation easement. Vital Ground is working to conserve the remaining gaps in this area. This project would continue our collaborative effort by helping Vital Ground conserve this property and its important riparian and upland habitat.

Conservation of the property would protect habitat and a movement corridor for one endangered and three threatened species listed under the Endangered Species Act: the endangered white sturgeon and the threatened grizzly bear, Canada lynx, and bull trout. Fifteen Montana State species of concern (SOC) and one special status species (SSS) use the property and neighboring areas (Table 1). Residential development of this property would increase human-wildlife conflicts and inhibit movement of wildlife, and this conservation easement project would preclude those issues.

Cabinet-Purcell Linkage Initiative

Highway 2 Linkage Zone

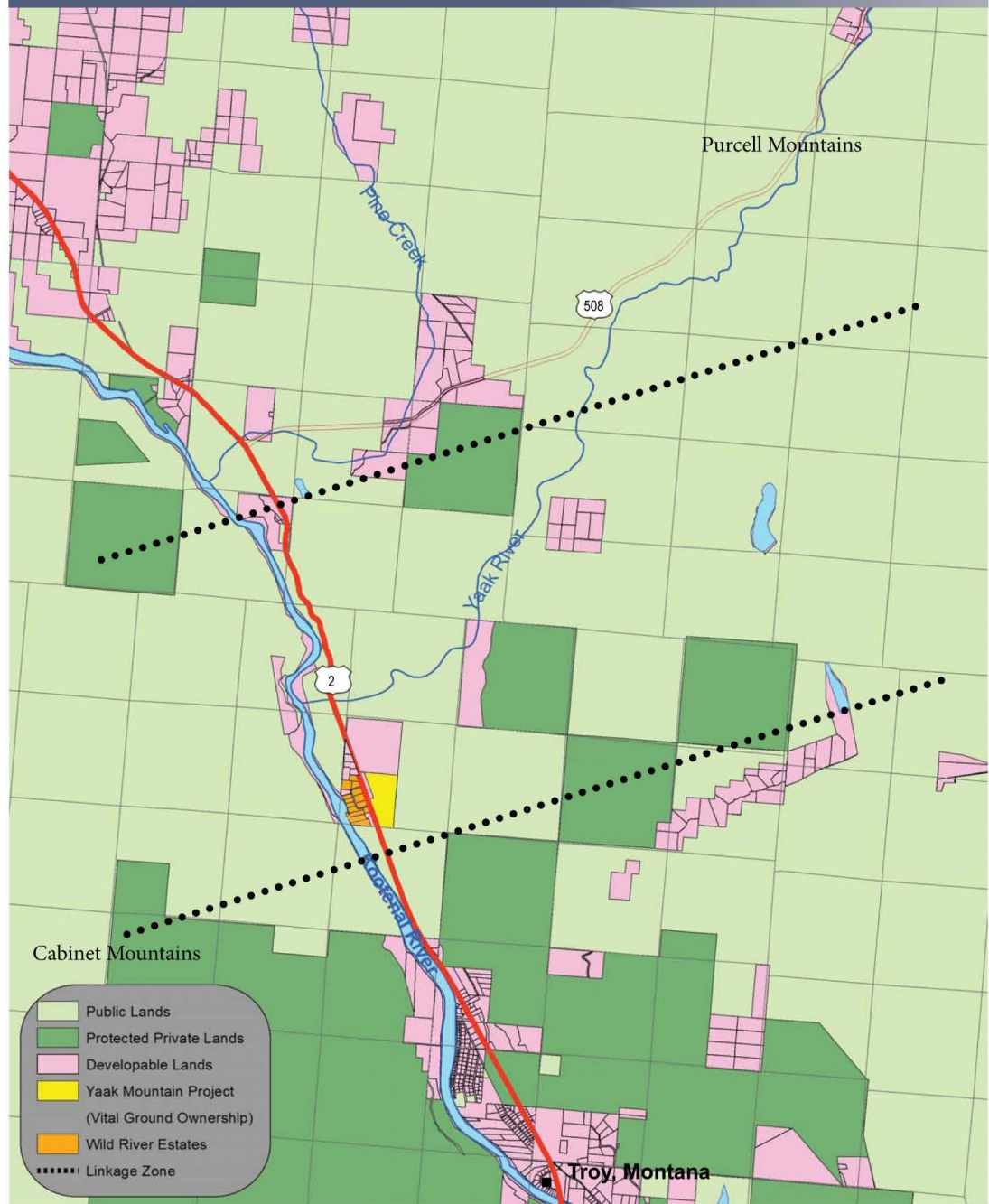


Figure 3. Detail of the grizzly bear linkage and wildlife movement corridor provided by the property (identified in orange) between the Purcell and Cabinet mountains.

Table 1. Montana state Species of Concern (SOC) found on the property.

Common Name	Scientific Name
Bull Trout	<i>Salvelinus confluentus</i>
Columbia River Redband Trout	<i>Oncorhynchus mykiss gairdneri</i>
Torrent Sculpin	<i>Cottus rhotheus</i>
Westslope Cutthroat Trout	<i>Oncorhynchus clarkii lewisi</i>
White Sturgeon	<i>Acipenser transmontanus</i>
Evening Grosbeak	<i>Coccothraustes vespertinus</i>
Grizzly Bear	<i>Ursus arctos</i>
Bald Eagle*	<i>Haliaeetus leucocephalus</i>
Brown Creeper	<i>Certhia americana</i>
Pileated Woodpecker	<i>Dryocopus pileatus</i>
Varied Thrush	<i>Ixoreus naevius</i>
Pacific Wren	<i>Troglodytes pacificus</i>
Fisher	<i>Pekania pennanti</i>
Western Toad	<i>Anaxyrus boreas</i>
Western Pearlshell	<i>Margaritifera falcata</i>
Geyer's Biscuitroot	<i>Lomatium geyeri</i>

* Bald Eagles are a state special status species (SSS), not a species of concern (SOC)

Vital Ground would continue to own and manage the land and FWP will hold a conservation easement which would preclude future residential or commercial development and ensure the property is managed to benefit fish and wildlife habitat in perpetuity. Public access to the property will be allowed for fishing and bird watching opportunities. The conservation easement would not require Vital Ground to provide hunting access on this property due to the property's small size and the proximity to Highway 2 and neighboring residences. The conservation easement document has provisions to ensure protection of important fish and wildlife habitat found on this property, as well as assurances for limited public recreation access (Appendix A). The CE designates one building area on the property where Vital Ground could construct two structures: a facilities management/operations shop and a storage structure (Fig. 2). It also provides the option to develop a public parking area in the future, if needed. A management plan was developed by Vital Ground, with input from FWP, to guide the day-to-day management of the property, as well as to inform long-term goals for improving the property's habitat quality (Appendix B).

8. Description and analysis of reasonable alternatives:

Alternative A: No Action

Under the No Action Alternative, FWP would not purchase a conservation easement on the property. Some or all of the lots could be sold in the future to fund other acquisitions by Vital Ground if they determined another area had a higher conservation value for grizzly bears. The public would not have guaranteed access to this property.

Alternative B: Proposed Action

Under the Proposed Action, FWP would acquire a conservation easement on approximately 50 acres of property along the Kootenai River just northwest of Troy, MT which is owned by The Vital Ground Foundation. Residential and commercial development of this property would be prevented in perpetuity. Limited public access would be secured under the terms of the conservation easement, though Vital Ground would not be required to allow hunting access on the property given its proximity to the highway and dwellings.

9. **Evaluation and listing of mitigation, stipulation, or other control measures enforceable by the agency or another government agency:** This CE would be purchased with funds granted from the U.S. Fish and Wildlife Service (Service) through their Recovery Land Acquisition Grant. Once all due diligence is completed for this project, the Service would review the documents before authorizing funding approval.

PART II. ENVIRONMENTAL REVIEW CHECKLIST

Evaluation of the impacts of the **Proposed Action** including secondary and cumulative impacts on the Physical and Human Environment.

A. PHYSICAL ENVIRONMENT

1. <u>LAND RESOURCES</u> Will the proposed action result in:	IMPACT *					
	Unknown *	None	Minor *	Potentially Significant	Can Impact Be Mitigated *	Comment Index
a. **Soil instability or changes in geologic substructure?		X				
b. Disruption, displacement, erosion, compaction, moisture loss, or over-covering of soil, which would reduce productivity or fertility?		X				
c. **Destruction, covering or modification of any unique geologic or physical features?		X				
d. Changes in siltation, deposition or erosion patterns that may modify the channel of a river or stream or the bed or shore of a lake?		X				
e. Exposure of people or property to earthquakes, landslides, ground failure, or other natural hazard?		X				

The proposed conservation easement would have no effect on existing soil patterns, structures, productivity, fertility, or instability because no soil-disturbing activities will occur.

2. <u>AIR</u> Will the proposed action result in:	IMPACT *					
	Unknown *	None	Minor *	Potentially Significant	Can Impact Be Mitigated *	Comment Index
a. **Emission of air pollutants or deterioration of ambient air quality? (Also see 13 (c).)		X				
b. Creation of objectionable odors?		X				
c. Alteration of air movement, moisture, or temperature patterns or any change in climate, either locally or regionally?		X				
d. Adverse effects on vegetation, including crops, due to increased emissions of pollutants?		X				
e. ***For P-R/D-J projects, will the project result in any discharge, which will conflict with federal or state air quality regs? (Also see 2a.)		NA				

No impacts to air quality would occur as a result of this conservation easement project.

3. <u>WATER</u> Will the proposed action result in:	IMPACT *					
	Unknown *	None	Minor *	Potentially Significant	Can Impact Be Mitigated *	Comment Index
a. *Discharge into surface water or any alteration of surface water quality including but not limited to temperature, dissolved oxygen or turbidity?		X				
b. Changes in drainage patterns or the rate and amount of surface runoff?		X				
c. Alteration of the course or magnitude of floodwater or other flows?		X				
d. Changes in the amount of surface water in any water body or creation of a new water body?		X				
e. Exposure of people or property to water related hazards such as flooding?		X				
f. Changes in the quality of groundwater?		X				
g. Changes in the quantity of groundwater?		X				
h. Increase in risk of contamination of surface or groundwater?		X				
i. Effects on any existing water right or reservation?		X				
j. Effects on other water users as a result of any alteration in surface or groundwater quality?		X				
k. Effects on other users as a result of any alteration in surface or groundwater quantity?		X				
l. ****For P-R/D-J, will the project affect a designated floodplain? (Also see 3c.)		NA				
m. ***For P-R/D-J, will the project result in any discharge that will affect federal or state water quality regulations? (Also see 3a.)		NA				

The proposed conservation easement would have no effect on surface water, drainage patterns, or groundwater and would not affect flood potential.

4. VEGETATION Will the proposed action result in?	IMPACT *					
	Unknown *	None	Minor *	Potentially Significant	Can Impact Be Mitigated *	Comment Index
a. Changes in the diversity, productivity or abundance of plant species (including trees, shrubs, grass, crops, and aquatic plants)?		X				
b. Alteration of a plant community?		X				
c. Adverse effects on any unique, rare, threatened, or endangered species?		X				
d. Reduction in acreage or productivity of any agricultural land?		X				
e. Establishment or spread of noxious weeds?		X				
f. ****For P-R/D-J, will the project affect wetlands, or prime and unique farmland?		NA				

No impacts to the property's vegetation would occur as a result of this conservation easement project. Vital Ground would continue to be responsible for noxious weed management on the property.

** 5. <u>FISH/WILDLIFE</u> Will the proposed action result in:	IMPACT *					
	Unknown *	None	Minor *	Potentially Significant	Can Impact Be Mitigated *	Comment Index
a. Deterioration of critical fish or wildlife habitat?		X				
b. Changes in the diversity or abundance of game animals or bird species?		X				
c. Changes in the diversity or abundance of nongame species?		X				
d. Introduction of new species into an area?		X				
e. Creation of a barrier to the migration or movement of animals?		X				
f. Adverse effects on any unique, rare, threatened, or endangered species?		X				
g. Increase in conditions that stress wildlife populations or limit abundance (including harassment, legal or illegal harvest or other human activity)?			X			5g.
h. ****For P-R/D-J, will the project be performed in any area in which T&E species are present, and will the project affect any T&E species or their habitat? (Also see 5f.)		NA				
i. ***For P-R/D-J, will the project introduce or export any species not presently or historically occurring in the receiving location? (Also see 5d.)		NA				

5g. The conservation easement would secure public access for fishing and other limited activities on the property which would likely increase human use from the current levels. This may negatively impact some species sensitive to human presence. FWP anticipates the levels of use and potential impacts to be minor. FWP would work with Vital Ground to develop strategies to manage any impacts if public use becomes an issue in the future.

B. HUMAN ENVIRONMENT

6. <u>NOISE/ELECTRICAL EFFECTS</u> Will the proposed action result in:	IMPACT *					
	Unknown *	None	Minor *	Potentially Significant	Can Impact Be Mitigated *	Comment Index
a. Increases in existing noise levels?			X			6a.
b. Exposure of people to severe or nuisance noise levels?		X				.
c. Creation of electrostatic or electromagnetic effects that could be detrimental to human health or property?		X				
d. Interference with radio or television reception and operation?		X				

6a. There is potential for increased noise levels with increased public use of this property, but the impact is anticipated to be minor and of limited duration, if at all.

7. <u>LAND USE</u> Will the proposed action result in:	IMPACT *					
	Unknown *	None	Minor *	Potentially Significant	Can Impact Be Mitigated *	Comment Index
a. Alteration of or interference with the productivity or profitability of the existing land use of an area?			X			7a.
b. Conflict with a designated natural area or area of unusual scientific or educational importance?		X				
c. Conflict with any existing land use whose presence would constrain or potentially prohibit the proposed action?		X				
d. Adverse effects on or relocation of residences?		X				

7a. The proposed conservation easement would not change how Vital Ground is currently managing the property to benefit fish and wildlife and their habitat. This conservation easement would remove all future residential and commercial development potential from this property in perpetuity.

8. <u>RISK/HEALTH HAZARDS</u>	IMPACT *					
	Unknown *	None	Minor*	Potentially Significant	Can Impact Be Mitigated *	Comment Index
Will the proposed action result in:						
a. Risk of an explosion or release of hazardous substances (including, but not limited to oil, pesticides, chemicals, or radiation) in the event of an accident or other forms of disruption?		X				
b. Affect an existing emergency response or emergency evacuation plan, or create a need for a new plan?		X				
c. Creation of any human health hazard or potential hazard?		X				
d. ***For P-R/D-J, will any chemical toxicants be used? (Also see 8a)		NA				

There would be no risks to human health as a result of this conservation easement project.

9. <u>COMMUNITY IMPACT</u>						
	Unknown *	None	Minor *	Potentially Significant	Can Impact Be Mitigated *	Comment Index
Will the proposed action result in:						
a. Alteration of the location, distribution, density, or growth rate of the human population of an area?			X			9a.
b. Alteration of the social structure of a community?		X				
c. Alteration of the level or distribution of employment or community or personal income?		X				
d. Changes in industrial or commercial activity?		X				
e. Increased traffic hazards or effects on existing transportation facilities or patterns of movement of people and goods?		X				

9a. This conservation easement would prevent all future residential and commercial development of the property in perpetuity. The property was subdivided years ago, but Vital Ground purchased the property in phases over the last several years to prevent the subdivided parcels from being developed for residential or commercial use.

10. <u>PUBLIC SERVICES/TAXES/UTILITIES</u> Will the proposed action result in:	IMPACT *					
	Unknown *	None	Minor *	Potentially Significant	Can Impact Be Mitigated *	Comment Index
a. Will the proposed action have an effect upon or result in a need for new or altered governmental services in any of the following areas: fire or police protection, schools, parks/recreational facilities, roads or other public maintenance, water supply, sewer or septic systems, solid waste disposal, health, or other governmental services? If any, specify:		X				
b. Will the proposed action have an effect upon the local or state tax base and revenues?			X			10b.
c. Will the proposed action result in a need for new facilities or substantial alterations of any of the following utilities: electric power, natural gas, other fuel supply or distribution systems, or communications?		X				
d. Will the proposed action result in increased use of any energy source?		X				
e. **Define projected revenue sources		X				10e.
f. **Define projected maintenance costs.		X				10f.

10b. The conservation easement would not change the ownership of the property nor would it change the type of use on the property. Therefore, the purchase of a conservation easement on this land would not impact the current level of taxes paid to Lincoln County. However, it may preclude future increases in gross tax revenues if the land were to eventually be developed for residential or commercial uses which would be precluded by the proposed conservation easement.

10e. and f. This property would not generate any revenue for FWP or have any future costs for maintenance associated with it other than annually monitoring the property to ensure the restrictions of the conservation easement are being followed.

** 11. <u>AESTHETICS/RECREATION</u> Will the proposed action result in:	IMPACT *					
	Unknown *	None	Minor *	Potentially Significant	Can Impact Be Mitigated *	Comment Index
a. Alteration of any scenic vista or creation of an aesthetically offensive site or effect that is open to public view?		X				
b. Alteration of the aesthetic character of a community or neighborhood?		X				
c. **Alteration of the quality or quantity of recreational/tourism opportunities and settings?		X				
d. ***For P-R/D-J, will any designated or proposed wild or scenic rivers, trails or wilderness areas be impacted? (Also see 11a, 11c.)		NA				

The proposed conservation easement would maintain and enhance aesthetic and recreation values by protecting riparian zones and fish and wildlife habitat and securing limited public access to the property.

12. <u>CULTURAL/HISTORICAL RESOURCES</u> Will the proposed action result in:	IMPACT *					
	Unknown *	None	Minor *	Potentially Significant	Can Impact Be Mitigated *	Comment Index
a. **Destruction or alteration of any site, structure or object of prehistoric historic, or paleontological importance?		X				
b. Physical change that would affect unique cultural values?		X				
c. Effects on existing religious or sacred uses of a site or area?		X				
d. ****For P-R/D-J, will the project affect historic or cultural resources? Attach SHPO letter of clearance. (Also see 12.a.)		NA				

No groundbreaking activities that could disturb cultural resources would be initiated as part of the proposed conservation easement.

C. SIGNIFICANCE CRITERIA

13. <u>SUMMARY EVALUATION OF SIGNIFICANCE</u> Will the proposed action, considered as a whole:	IMPACT *					
	Unknown *	None	Minor *	Potentially Significant	Can Impact Be Mitigated *	Comment Index
a. Have impacts that are individually limited, but cumulatively considerable? (A project or program may result in impacts on two or more separate resources that create a significant effect when considered together or in total.)		X				
b. Involve potential risks or adverse effects, which are uncertain but extremely hazardous if they were to occur?		X				
c. Potentially conflict with the substantive requirements of any local, state, or federal law, regulation, standard or formal plan?		X				
d. Establish a precedent or likelihood that future actions with significant environmental impacts will be proposed?		X				
e. Generate substantial debate or controversy about the nature of the impacts that would be created?		X				
f. ***For P-R/D-J, is the project expected to have organized opposition or generate substantial public controversy? (Also see 13e.)		NA				
g. ****For P-R/D-J, list any federal or state permits required.		NA				

The proposed action would have no negative cumulative effects on the biological, physical, or human environments. When considered over the long-term, the proposed conservation easement would secure the property's existing fish and wildlife habitat. This project would also secure limited public recreation access on the property in perpetuity.

PART III. NARRATIVE EVALUATION AND COMMENT

The proposed action would have no negative cumulative effects on the biological, physical, and human environments. The preferred alternative would protect the property in its current state and prevent any future development of this property. Public access would increase but negative impacts are expected to be minimal. The proposed conservation easement would permanently protect the fish and wildlife habitat and movement corridor that this property provides.

PART IV. PUBLIC PARTICIPATION

- 1. Describe the level of public involvement for this project, if any, and, given the complexity and the seriousness of the environmental issues associated with the proposed action, is the level of public involvement appropriate under the circumstances?**

The public will be notified in the following manners to comment on the Wild River Conservation Easement Project:

- Public notices in each of these papers: *Flathead Beacon*, *Daily Inter Lake*, *The Western News*, *The Montanian*, and *Helena Independent Record*;
- Public notice on the Fish, Wildlife & Parks web page: <http://fwp.mt.gov>;
- Direct notice will be given to adjacent landowners;
- Draft EA's will be available at the FWP Region 1 Headquarters in Kalispell; and
- A news release will be prepared and distributed to a standard list of media outlets interested in FWP Region 1 issues.

This level of public notice and participation is appropriate for a project of this scope having limited impacts, many of which can be mitigated.

- 2. Duration of comment period.**

The public comment period will extend for (20) twenty days. Written comments will be accepted until 5:00 p.m. on February 17, 2020 and can be e-mailed to stevie.burton@mt.gov.

or mailed to the address below:

Wild River Conservation Easement Project
Montana Fish, Wildlife & Parks
Attn: Stevie Burton
490 N. Meridian Road
Kalispell, MT 59901

PART V. EA PREPARATION

- 1. Based on the significance criteria evaluated in this EA, is an EIS required? No. If an EIS is not required, explain why the EA is the appropriate level of analysis for this proposed action.**

Based on an evaluation of impacts to the physical and human environment under MEPA, this environmental review revealed no significant negative impacts from the proposed action: therefore, an EIS is not necessary and an environmental assessment is the appropriate level of analysis. In determining the significance of the impacts, Fish, Wildlife and Parks assessed the severity, duration, geographic extent, and frequency of the impact, the probability that the impact would occur or reasonable assurance that the impact would not occur. FWP assessed the growth-inducing or growth-inhibiting aspects of the impact, the importance to the state and to society of the environmental resource or value effected, any precedent that would be set as a result of an impact of the proposed action that would commit FWP to future actions; and potential conflicts with local, federal, or state laws. As this EA revealed no significant impacts from the proposed actions, an EA is the appropriate level of review and an EIS is not required.

2. Person responsible for preparing the EA:

Kris Tempel
Montana Fish, Wildlife and Parks, Region 1
Habitat Conservation Biologist

3. List of agencies consulted during preparation of the EA:

Montana Fish, Wildlife & Parks
Lands Unit
Legal Unit
Fisheries Division
Wildlife Division

APPENDICES

- A. Conservation Easement
- B. Management Plan

APPENDIX A

WILD RIVER

***Draft* DEED OF CONSERVATION EASEMENT**

THIS DEED OF CONSERVATION EASEMENT (“Easement”) is granted this _____ day of _____, 2020, by The Vital Ground Foundation, Inc., a Utah corporation qualified to do business in the State of Montana, whose address is 20 Fort Missoula Rd., Missoula, MT 59804 (“Landowner”), to the Montana Department of Fish, Wildlife and Parks, an agency of the State of Montana, whose address is 1420 East Sixth Avenue, P.O. Box 200701, Helena, Montana 59620-0701 (“Department”).

The following Exhibits are attached hereto and incorporated into this Deed of Conservation Easement (“Easement”) by this reference.

Exhibit A - Legal Description of the Wild River Deed of Conservation Easement

Exhibit B - Map of the Land

Exhibit C - Map of Building Area and Designated Access Point

Exhibit D - Water Rights

I. RECITALS

- A. The people of the State of Montana recognize that certain native plant communities and important fish and wildlife habitat are worthy of perpetual conservation and have authorized the Department to acquire perpetual conservation easements, as described in § 76-6-101 *et seq.*, Montana Code Annotated (“MCA”), from this willing Landowner by voluntary, cooperative means to conserve native plant communities, habitat and other natural resource values.
- B. Landowner is the owner of certain real property in Lincoln County, Montana (the “Land”), legally described in Exhibit A, attached hereto and incorporated herein. The Conservation Easement Boundary is depicted in Exhibit B, attached hereto and incorporated herein.
- C. The Land possesses significant natural values and communities of native fish habitat, as well as native plant and wildlife habitat, natural and scenic open-space lands, and public recreational opportunities, all of which are collectively termed “Conservation Values” and are valuable to the people of Montana and worthy of perpetual conservation.
- D. The Conservation Values of the Land can be protected in perpetuity by Landowner and the Department through the grant of a conservation easement to the Department as well as over management of the Land, with Landowner retaining fee title to the Land, all consistent with the terms and conditions of this Easement.
- E. Landowner and the Department agree that the Conservation Values of the Land should be preserved and maintained by the continuation of land use patterns that do not significantly

impair or interfere with the protection and preservation of these Conservation Values, in perpetuity.

- F.** The Land provides important opportunities for public recreational fishing and wildlife viewing, and the Landowner and the Department specifically intend that this Easement afford public access for fishing and wildlife viewing purposes.
- G.** The Landowner intends by executing this Easement, freely, without restriction, and voluntarily, to grant to the Department this Easement, and its associated rights, to preserve and protect the Conservation Values in perpetuity.

II. AGREEMENT

In consideration of the sums paid by the parties hereto, and in further consideration of the recitals, mutual covenants, and terms contained in this Easement and pursuant to the laws of the State of Montana and in particular to the Open-Space and Voluntary Conservation Easement Act, §§ 76-6-101, *et seq.*, MCA; the Department's wildlife habitat acquisition authority, §§ 87-1-209, *et seq.*, MCA; and Title 70, Chapter 17, MCA, the Landowner voluntarily grants and conveys to the Department, and the Department accepts, a conservation easement in perpetuity, with warranties of title, consisting of the following rights and restrictions over and across the Land described in Exhibit A and shown in Exhibit B.

A. PURPOSES

- 1.** The purposes of this Easement are to preserve, protect, and restore upon mutual agreement with the Landowner, in perpetuity, the Conservation Values of the Land, including but not limited to the habitat the Land provides for a variety wildlife species, and to prevent any use that will interfere with the Conservation Values of the Land. Landowner and the Department intend this Easement to limit the uses of the Land to those activities that are consistent with the Conservation Values and the purposes of this Easement.
- 2.** An additional specific purpose of this Easement is to provide to the Department pursuant to its authority to acquire interests in land at § 87-1-209, MCA, on behalf of the public, the right of reasonable access to the Land for the recreational uses specified herein, in accordance with the terms and conditions set forth in Section II.B.5 below.
- 3.** If one or more of the purposes of this Easement may no longer be accomplished, such failure of purpose shall not be deemed sufficient cause to terminate the entire Easement as long as any other purpose of the Easement may be accomplished. The Department and Landowner recognize that changes in economic conditions, in agricultural technologies, in accepted farm, ranch and forest management practices, and in the situation of Landowner may result in an evolution of agricultural, silvicultural, and other uses of the Land, and such uses are permitted provided they are and remain consistent with the purposes of this Easement.

4. Pursuant to the terms of § 76-6-107, MCA, the Land preserved by this Easement as natural land, may not, except as specifically provided herein and pursuant to statute, be converted or diverted to any uses other than those provided for by this Easement.

B. RIGHTS CONVEYED TO THE DEPARTMENT

The rights conveyed to the Department in perpetuity by this Easement are the following:

1. **Identification and Protection.** To identify, preserve, protect, and enhance, by mutual agreement, in perpetuity, the Conservation Values; subject, however, to the rights reserved by the Landowner in this Easement in Section C below, and further subject to all third-party rights of record in and to the Land that are not subordinated to the terms and conditions of this Easement.
2. **Access.** Upon **Prior Notice** to the Landowner, to enter upon and to inspect the Land; to observe, study, and make scientific observations of the Land's wildlife, wildlife habitat and ecosystems; and to establish and maintain vegetation monitoring transects and enclosures, all to assure that the Department's rights in the Land are maintained and all in a manner that will not unreasonably interfere with the use of the Land by the Landowner. The Department shall also have the right to enter the Land to enforce the rights granted to the Department in this Easement, and Landowner expressly conveys to the Department a right of immediate entry onto the Land if, in the Department's sole judgment, such entry is necessary to prevent damage to or destruction of the Conservation Values protected by this Easement. Aside from the rights of access granted in this paragraph and in Paragraph II.B.5., this Easement does not grant the Department, nor the public, any rights to enter upon the Land.
3. **Injunction and Restoration.** Subject to II.C, to enjoin any activity on the Land or use of the Land which is inconsistent with the purposes and terms of this Easement, or which may have a significant adverse impact on the Conservation Values, and to enforce the reasonable restoration of any Conservation Values that are damaged by such activities.
4. **Markers.** To place and replace, during inspections authorized above, small markers to identify boundaries, corners, and other reference points on the Land. Landowner shall not remove such markers without **Prior Approval**, which will not be unreasonably withheld, as provided in Section II.G below.
5. **Public Recreational Access.** The right, on behalf of the general public, of access at the Access Point for the purposes of recreational fishing and wildlife viewing on the Land and for crossing the Land to adjacent public land, as provided for in the Management Plan and in accordance with the following terms and conditions:
 - a. Landowner has the right to manage the distribution of the public on the Land to address reasonable concerns for the safety of persons and protection of personal property,

the Conservation Values and existing improvements or improvements approved under this Easement.

b. The public may fish on the Land in accordance with fishing regulations adopted by the State of Montana.

c. The grant of fishing rights by Landowner to the Department contained in this Paragraph II.B.5 shall be deemed exclusive to the Department for the benefit of the public and is specifically conveyed pursuant to the following: (i) § 70-17-102(1), MCA , and thereby this grant creates a servitude running with the Land, and (ii) the Montana Open Space Land and Voluntary Conservation Easement Act, § 76-6-101 *et seq.*, MCA , and thereby this grant creates a conservation easement for the purpose of protecting significant open-space land protected and preserved for recreational purposes under § 76-6-104(3)(a), MCA.

d. Currently two access points exist from a public road. Landowner shall endeavor to close one access point and Meadow Drive except at the Access Point and along the north side of Lot 10, by any lawful means. Those members of the public who have access to the Land pursuant to Paragraph II B.5 shall also have motor vehicle access at the Access Point, including parking on Lot 10, identified in Exhibit C , and no other routes or points of access except by amendment of the Management Plan. The public may not drive beyond Lot 10 for any purpose, except with the express permission of Landowner or Landowner's agent. The public may travel on foot from the Access Point and Lot 10 to fish, view wildlife and otherwise for the purposes and in the manner prescribed in this Paragraph II.B.5 of this Easement. Furthermore, the public may travel by foot via designated route(s) across the Land to adjacent public lands which allow public recreational use. Upon agreement with Landowner, the Department may open additional access points in accordance with the Management Plan.

e. Furthermore, the Department reserves the right to temporarily restrict the public's access to the Land as deemed necessary or appropriate to protect the Land, wildlife or wildlife habitat or the public.

f. Notwithstanding any provision that may be construed to the contrary, Landowner may deny access to anyone who is not conducting, or has not in the past conducted, herself or himself in a prudent, responsible and safe manner, and denial of access for this reason shall not be deemed preferential or discriminatory.

g. Except as specifically set forth in this Paragraph II.B.5, this Easement does not grant public access to any portion of the Land for any reason. This Easement does not grant any public right of overnight camping.

6. Habitat Restoration and Enhancement. The non-exclusive right to conduct fish and wildlife habitat restoration and enhancement projects, in cooperation with Landowner and

consistent with the Management Plan. Any habitat restoration or enhancement project not specifically provided for in the Management Plan requires prior approval of Landowner.

C. RIGHTS RESERVED TO LANDOWNER

Landowner reserves to itself, and to its successors and assigns, all rights accruing from ownership of the Land, including the right to enter and manage the Land and engage in or permit others to engage in all uses of the Land that (a) are not expressly conveyed to the Department; (b) are not prohibited or restricted by this Conservation Easement; (c) are consistent with the purposes of this Conservation Easement; and (d) do not harm the Conservation Values of the Land. Some of these reserved rights identified in this Section II.C are subject to specified conditions or to the requirement of, and procedures for, obtaining the Department's **Prior Approval or Prior Notice**, as described in Paragraph II.G of this Easement. Without limiting the generality of the previous statements and subject to the restrictions on Landowner's activities set forth in Paragraph II.D, Landowner expressly reserves the following rights:

1. **Management Activities.** The right to use the Land and to use equipment on the Land to manage habitat for wildlife, all in a manner consistent with the following provision: Any areas cultivated for wildlife forage or vegetation management at the time this Easement is granted and shown in the Baseline Report may continue to be cultivated according to the terms of the Management Plan.
2. **Leasing the Land.** With **Prior Notice**, the Land may be leased, provided that:
 - a. a written lease must be entered into by Landowner and the lessee(s), expressly requiring the lessee to follow the terms of this Easement and the Management Plan;
 - b. a copy of the executed lease must be provided to the Department; and
 - c. Landowner retains responsibility under this Easement for ensuring compliance with the terms of this Easement and the Management Plan by lessee(s).
3. **Habitat Restoration and Enhancement.** The non-exclusive right to conduct fish and wildlife habitat restoration and enhancement projects, in cooperation with the Department and consistent with the Management Plan. Any habitat restoration or enhancement project not considered to be regular maintenance and not specifically provided for in the Management Plan requires **Prior Approval** of the Department.
4. **Water Resources and Facilities.** The right to use, develop, maintain and replace water resources, including stock water ponds, ditches, irrigation structures and equipment, canals, pumps and pump sites, pipelines and water wells, necessary for fish, wildlife and habitat restoration and enhancement, and to serve structural improvements within the Building Area; provided, however, any new water development or change in water use or

water distribution that would have a significant adverse impact on a perennial or ephemeral river or stream, streamflow, wetland, riparian vegetation or wildlife habitat, movement or migration on or through the Land is prohibited. Maintenance of canals, ditches, culverts and drains – including the periodic removal of vegetation as necessary to keep water management facilities in operational condition – is not a violation of this Easement. Additionally, it is understood that maintenance of reservoirs, ditches and other water resource facilities may involve removal and deposit of accumulated soil and organic matter, and the Department hereby agrees that such soil and organic matter may be removed from the water resource facilities and deposited on the Land at or near the location of the removal activity in a manner customary to such operations.

5. **Human-made Structures.** Landowner has the following rights pertaining to human-made structures (in addition to those rights for structures and facilities for water use and irrigation development that are provided in Paragraph II.C.4):

a. **Building Area.** The purpose of the Building Area is to cluster new structures on the Land to minimize impact to the Conservation Values. If necessary, buried pipelines may be located outside of the Building Areas if required to maintain water resources, water facilities or structures.

i. Presently, no structures exist on the Land.

ii. Exhibit C depicts the Building Area permitted by this Easement, and shall consist of platted Lot 10. The Building Area shall be subject to all the terms of this Easement.

b. **Structures Permitted.** The only structures permitted on the Land shall be located within the Building Area and shall be limited to a total of two structures: A facilities management/operations shop and a storage structure.

c. **Fences.** The right to construct, remove, maintain, renovate, repair or replace fences necessary for generally accepted fish, wildlife, habitat and public use management purposes. Any new or renovated fence or other barrier that the Department determines would significantly impact wildlife habitat or wildlife movement or migration on or through the Land must be “wildlife friendly” as described in the Management Plan. This does not apply to fences, windbreaks and other structures necessary to protect property.

6. **Roads.** To construct new, maintain existing, and lawfully demolish, abort or terminate the designation of roads and bridges or waterway crossings in connection with fish, wildlife, habitat and land management as herein permitted. Any road, bridge, or waterway crossings constructed or demolished for one or more of such purposes shall be sited and maintained so as to minimize adverse impact on the Conservation Values. Any new road construction (but not including maintenance of existing roads) shall be subject to **Prior Approval** of the Department, as set forth in Section II.G of this Easement. The Department’s approval shall be contingent on confirmation that (a) the road’s intended

purpose is permitted by this Easement, (b) its location will not result in significant soil erosion, and (c) the new road shall not materially disturb wildlife or wildlife habitat or other protected Conservation Values.

Landowner's written request for approval shall include a construction plan describing the purpose of the road, its location on a topographic map and, to the extent deemed necessary by the Department, descriptions of the following: road grade, drainage, erosion/sedimentation impacts and mitigating efforts, areas of cut and fill, and special concerns like culvert placement, bridges, fords, buffer strips between roads and streams, and fish and wildlife impacts and mitigating efforts. Seeding and reestablishment of cover vegetation, which is native or is representative of adjacent perennial plant species, and control of noxious weeds on exposed cuts, fills and banks will be a required condition of any new road construction.

7. **Non-Commercial Use.** Landowner reserves to itself the right to use the Land for noncommercial purposes, including fishing, education and nonprofit business, all in accordance with Section II.B.5 and Section II.D.

8. **Utilities.**

- a. **Existing Utilities.** Landowner retains the right to maintain, repair, remove and upgrade utilities existing on the Land at the time of the grant of this Easement, including utility structures, lines, conduits, cables, wires and pipelines ("Utilities").

- b. **New Utilities on the Land.** Subject to **Prior Approval**, Landowner retains the right to install and construct new Utilities upon, over, under, within or beneath the Land to existing and subsequently constructed structures and improvements that are expressly permitted on the Land by this Easement. The Department will require the Landowner to submit a Utility Plan as outlined in Paragraph II.C.9.c ("Utility Plan").

- c. **Utility Plan.** Landowner shall contact the Department prior to the preparation of the Utility Plan to obtain the required information to be included in such Plan that the Department deems relevant to its ability to protect the Conservation Values in perpetuity. Landowner and the Department will mutually determine the completeness of the Utility Plan and its adherence to the general and specific intentions of this Easement prior to the Department's approval of the Plan. Any new and expanded utility services and associated right-of-way easements must be memorialized in a written agreement that is recorded in the public records of the County where the Land is situated, signed by the Landowner, the Department and the utility service provider prior to construction.

9. **Renewable Energy Generation for Use On the Land.** With **Prior Approval** of the Department, Landowner reserves the right to construct solar energy generation facilities (hereafter "renewable energy production") solely for use on the Land. Any incidental surplus energy may be sold commercially for use off the Land or credited to Landowner's utility service. Design and location of facilities and fixtures associated with renewable

energy generation must be located within the Building Area and is subject to **Prior Approval** of the Department.

10. Pesticide Application and Weed Management.

a. Landowner shall not have the right to use pesticides (as defined by MCA 80-8-102) or herbicides except for weed management, as more particularly addressed in the Management Plan. Landowner shall have the right to use legally authorized herbicides for management of noxious weeds, as defined by the state of Montana or other lawful authority with jurisdiction, and other invasive nonnative plants. Such use must be in the amount and frequency of application constituting the minimum necessary to accomplish reasonable control of weeds, and in a manner that will minimize damage to native plants. Landowner shall have the right to use biological control agents for weed management, provided that these biological agents have been approved for the specified use by appropriate governmental agencies. The parties hereto shall coordinate their weed management efforts with each other

b. **Prior Approval** is required for aerial application of any herbicide or biological control agent on the Land.

11. Regulation of Public Use. The right to regulate public use of the Land at all times; subject, however, to the right of public fishing and wildlife-viewing access granted to the Department in Paragraph II.B.5.

12. Oil, Gas, or Mineral Exploration and Extraction.

a. Subject to, and without limiting any obligations of Landowner under, Montana Code Annotated § 82-11-202, Landowner shall not mine or extract soil, sand, gravel, oil, natural gas, fuel, coal, or any other mineral substance owned by Landowner as of the date of this Easement or later acquired by Landowner, using any surface mining, subsurface mining, or dredging method.

b. If a third party owns or leases the oil, natural gas, or any other mineral substance at the time this Easement is executed, and its interests have not been subordinated to the Easement, the Landowner must notify the Department as soon as practical after Landowner becomes aware of any proposed exploration or extraction activity by such third party, which is not subject to the terms of this Conservation Easement unless expressly subordinated thereto. Landowner and the Department shall confer to review the proposed activity and to determine proposals to best mitigate any potential impact on the Land and the Conservation Values of the proposed activities. Subject to Montana Code Annotated § 82-10-504, Landowner and the Department shall subsequently cooperate in an effort to encourage the third party to adopt recommended mitigating measures in the third party's exploration and development activities.

c. This Easement does not restrict any third parties owning or leasing any of the oil, natural gas, or any other mineral substances under the Land from a right of ingress or

egress or prevent such third parties use and occupancy of the surface of the Land. Nothing herein shall require the Landowner to indemnify the Department for exploration or extraction activity by any third-party mineral interest owner.

13. Subdivision and Conveyance of Land Ownership. For the purposes of this Easement:

- a. The Land shall be considered to comprise one unit, as described in Exhibit A and shown in Exhibit B. The Landowner and the Department mutually intend that the entire Land shall be maintained in unified title as a single unit. Furthermore, any other parcel designation existing at or subsequent to the date of the conveyance of this Easement, including but not limited to government lots, aliquot parts, and certificates of survey, are considered to be an integral part of the Unit within which they are located, and may not be divided, subdivided, separated or conveyed separately from the entirety.
- b. The Landowner may sell, grant, donate, bequeath or otherwise convey the Land in its entirety to another party, and only in its entirety.
- c. Landowner shall provide the Department with **Prior Notice** before entering into an agreement that would commit the Landowner to convey the Land to another party. The purpose of this notice is to afford the Department with the opportunity to review the proposed conveyance document and any associated legal agreement to ensure consistency with the provisions of this Paragraph II.C.13.
- d. With **Prior Approval**, the restrictions contained in this Paragraph 13 do not prohibit the Landowner from entering into de minimis boundary line adjustments with neighboring landowners to address encroachments.

14. Commercial Uses. The right to:

- a. Conduct activities as provided for in this Easement and the Management Plan; and
- b. Conduct temporary or seasonal outdoor activities or events, as provided in the Management Plan.

15. Agricultural Uses. Landowner reserves the right to conduct limited agricultural activities on the Land for purposes of vegetation and wildlife management as specified in the Management Plan.

16. Signs. Landowner may place signs to state conditions of access to the Land and for educational purposes.

D. RESTRICTIONS ON LANDOWNER'S ACTIVITIES

Any activity on or use of the Land that is inconsistent with the purposes and terms of this Easement is prohibited. Without limiting this general prohibition, the following activities and

uses are expressly prohibited or restricted.

1. **Vegetation Removal.** The destruction, removal, control, or manipulation of native vegetation, sagebrush, planted nesting cover or permanent cover is prohibited, except as part of or incidental to the habitat restoration or enhancement activities specified herein and other land uses specifically allowed by this Easement or in the Management Plan. The removal of live or standing dead trees is prohibited without **Prior Approval**; however, Landowner does not require **Prior Approval** to remove trees and other woody vegetation that pose a threat to human safety, travel ways or structures.
2. **Wetland and Riparian Areas.** For the purposes of this Easement:
 - a. The draining, filling, dredging, leveling, burning, ditching or diking of any natural or human-made wetland or riparian area, streambank stabilization, or any other activity that significantly impacts any such area is prohibited. However, wetland and riparian areas may be restored, developed or enhanced, by either Landowner or the Department, to benefit wildlife and to further the purposes of the Easement as a part of restoration and enhancement activity approved under Paragraph II.C.3. Riparian areas are defined as vegetation zones adjacent to rivers, streams and wetlands, including banks and adjacent uplands, and are influenced by adjacent flowing or standing water or by a shallow water table caused by river-associated groundwater. Wild hay fields, cultivated fields, active river channels or eroded river banks devoid of effective wildlife cover are not considered riparian areas.
 - b. The control, removal, or manipulation of any trees, willows, or other woody vegetation by any means is prohibited, except as needed for the ordinary course of maintaining fences provided for and allowed under this Easement or incidental to habitat restoration and enhancement activities permitted by this Easement and specified in the Management Plan.
3. **Subdivision.** The legal or *de facto* division or subdivision of the Land is prohibited, which shall include but shall not be limited to any subdivision, short subdivision, platting, binding site plan, testamentary division or other process by which the Land is divided into lots or in which legal or equitable title to different portions of the Land are held by different owners. The Landowner may not indirectly subdivide all or any part of the Land through the allocation of property rights among partners, shareholders or members of any legal entity (including a homeowners' association), the creation of a horizontal property regime, interval or time-share ownership arrangement, leasing, partitioning among tenants-in-common, judicial partition or by any other means. Landowner and the Department mutually intend that the entire Land shall be maintained in unified title as a single unit. Notwithstanding any other provision of this paragraph to the contrary, however, Landowner may lease the Land as provided in this Easement and subject to the Management Plan.

The Land may not be used as open or natural space or parkland for any subdivision or

development purposes or requirements on land not covered by this Easement, nor may Landowner transfer any development or subdivision rights separate from the Land.

4. **Water Rights.** Landowner will not transfer, encumber, sell, lease or otherwise separate water rights from the Land, including any water rights existing at the time of execution of this Easement as shown in Exhibit D, as well as any water rights later determined to have existed at the time of this Easement and any water rights acquired by Landowner after execution of this Easement. If Landowner receives notice or becomes aware of a situation under which water rights may be lost from the Land, Landowner shall notify the Department, and the parties may work cooperatively to address the situation.
5. **Agricultural Chemicals.** The use of herbicides, biological control agents and pesticides in a manner other than as provided for in Paragraph II.C.10 is prohibited.
6. **Roads.** The construction of roads in a manner other than as provided for in Paragraph II.C.6 is prohibited.
7. **Surface Alteration.** The cultivation or farming of any portion of the Land is prohibited, except as allowed for in II.C.3.
8. **Commercial Recreation.** The sale or lease of access to the Land for hunting, fishing, trapping or wildlife viewing purposes, whether or not as a part of a commercial outfitting or guiding business, is prohibited. Operating a commercial hunting, fishing or trapping operation, or charging fees (sometimes known as trespass fees) for hunting, fishing, trapping or wildlife viewing on the Land or for access across the Land to reach public land or other private land, is prohibited.
9. **Mineral Exploration and Extraction.** Landowner may not engage in, authorize or contract for any exploration for, or development and extraction of minerals, coal, ore, bentonite, oil and gas, other hydrocarbons, soils, rock, sand, gravel, or similar materials, except as provided for Paragraph II.C.12. Any other mineral exploration, development or extraction is prohibited.
10. **Human-made Structures.** The construction or placement of any structure on the Land is prohibited except as provided for in Section II.C.
11. **Commercial Feedlot.** The establishment or operation of a commercial feedlot is prohibited. A commercial feedlot is defined for purposes of this Easement as a permanently constructed confined area or facility within which the Land is not grazed or cropped annually, for the purpose of engaging in the business of the reception and feeding of livestock for hire.
12. **Shooting Preserve, Wildlife Propagation and Related Activities.** The use of the Land as a game farm, game bird farm, shooting preserve, fur farm, zoo or menagerie, or in connection with the ownership, leasing, keeping, holding, capture, propagation, release,

introduction or trade in any animal that may pose a genetic or disease threat to any mammalian, avian, reptilian, aquatic or amphibian wildlife species, whether or not indigenous to Montana, is prohibited. This prohibition does not apply to the introduction, transplantation or release of fish or wildlife species on the Land by the Department, which must have the consent of Landowner for any such introduction, transplantation or release on the Land.

13. **Commercial and Industrial Use.** Except as permitted in Section II.C, the establishment or operation of any commercial or industrial uses of or activities on the Land, including but not limited to guest ranching, outfitting, restaurant, night club, campground, trailer park, motel, hotel, commercial swimming area, gas station, retail outlet or facility for the large scale manufacture or distribution of any products is prohibited.
14. **Waste Disposal.** The processing, dumping, storage or disposal of waste, refuse or debris on the Land is prohibited, except as provided for in the Management Plan. The deposit of material from water resource facility maintenance activities provided for in Paragraph II.C.4, is not considered waste disposal.
15. **Hazardous Materials.** Any petroleum products, explosives, hazardous substances, toxic substances, and any other substance which may pose a present or potential hazard to human health or the environment shall not be released or dumped on the Land at any time, and shall not be stored or used, except as lawfully stored and used in necessary quantities for habitat restoration and enhancement purposes. The installation of gas storage tanks is prohibited.

E. MANAGEMENT PLAN

1. The parties to this Easement developed a Management Plan for fish and wildlife habitat management, public access and public use management, fish and wildlife habitat enhancement and restoration, fish and wildlife passage improvement measures, and other matters pertaining to the management of the natural resources of the Land under this Easement. Landowner and the Department have signed the Management Plan, which represents a contractual agreement between the parties to abide by its specific requirements, management actions and restrictions. However, if any inconsistency exists between the terms of the Management Plan and this Easement, the terms of this Easement shall control. The parties shall meet periodically as needed to review the Management Plan and, if deemed necessary, to propose amendments. Any amendment to the Plan must have the written consent of both parties.
2. In the event that the Land is to be conveyed or has been conveyed to a new owner ("Successor in Interest"), the Department agrees to enter into discussions with the Successor in Interest, if requested, for the purpose of reviewing the existing Management Plan and determining any revisions that might be appropriate to facilitate management of the Land in a manner consistent with the purposes and terms of this Easement. The Successor in Interest may sign, acknowledge and thereby continue the Management Plan

that is in effect at the time of the transfer of ownership, or the Successor in Interest may sign and acknowledge a revised Management Plan agreed upon by the Department. However, in the event that the Successor in Interest has not executed a continuation of the existing Management Plan or a revised Management Plan, then the Management Plan in effect at the time of the ownership transfer shall remain in full force and effect. Prior to transfer of ownership, Landowner shall provide the Successor in Interest with a copy of the Management Plan and any amendments thereto.

F. EASEMENT BASELINE REPORT

The parties agree that an Easement Baseline Report (“Baseline Report”), including photographs, maps, surveys, studies, reports and other documentation, has been completed by a Department biologist or natural resource professional familiar with the area, reviewed by the Department and Landowner, and acknowledged by them in writing to be an accurate representation of the physical and biological condition of the Land and its physical improvements as of the date of the conveyance of this Easement. The original Baseline Report shall be maintained in the files of the Department and shall be made available to Landowner for inspection and reproduction at Landowner’s request. The parties intend that the Baseline Report shall be used by the Department to monitor Landowner’s compliance with the terms and conditions of this Easement.

In the event a controversy arises with respect to the nature of the biological and/or physical condition of the Land and its improvements, the parties may use the Baseline Report, as well as all other relevant or material documents, surveys, reports and other information to assist in the resolution of the controversy. From time to time, with the consent of Landowner, the Department may prepare (or have prepared) an Updated Easement Baseline Report to document any habitat restoration or other changed habitat conditions. Upon review and approval of the updated report by Landowner and the Department, the changed habitat conditions documented in the Updated Easement Baseline Report shall be considered the baseline conditions to be conserved and against which the impacts of future activities shall be evaluated.

G. PRIOR NOTICE AND PRIOR APPROVAL

1. Whenever **Prior Notice** is required under this Easement, Landowner must notify the Department in writing not less than 30 days prior to the date the Landowner intends to undertake such activity, unless a shorter period is necessary for safety reasons, in which case Landowner shall give the Department as much notice as is possible under the circumstances. The purpose of requiring Landowner to notify the Department prior to undertaking certain permitted activities is to afford the Department an opportunity to ensure that such activities are designed and carried out in a manner consistent with this Easement and its purposes.
2. Whenever **Prior Approval** is required under this Easement, Landowner must notify the Department in writing not less than 60 days prior to the date Landowner intends to undertake the activity. The notice must be sent by courier service, or registered or certified mail, return receipt requested, or personal delivery, or email with confirmation of receipt provided by the Department. The notice must describe the nature, scope,

design, location, timetable and any other material aspect of the proposed activity in sufficient detail to permit the Department to make an informed judgment as to its consistency with this Easement and its purposes. The Department has 60 days from its receipt of such notice to review the proposed activity and to notify the Landowner of any objections. If it is possible that the proposed activity can be modified to be consistent with the terms of the Easement, the Department shall inform Landowner of the manner in which the proposed activity as modified may be conducted. The Department's response to Landowner's notice shall be sent by registered or certified mail, return receipt requested, or delivered by courier, or personal delivery service, or emailed. In the event the Department denies Landowner's proposed activity, the Department shall provide a written determination with analysis of why such activity would negatively impact the Conservation Values of the Land.

3. The Department shall use reasonable diligence to respond to Landowner's notice within 60 days of delivery. If the Department fails to respond to Landowner's notice of Prior Approval within 60 days of its receipt of the notice, the proposed activity shall be deemed to be constructively denied. Because a constructive denial is not a decision by the Department based on the merits of the Landowner's notice, it is not final and binding on the Landowner. The Landowner can resubmit the same or similar notice, which the Department shall act upon within 60 days from the date of delivery of the second notice, or the notice shall be deemed approved.
4. Landowner shall be under no liability or obligation for any failure to give **Prior Notice** or seek **Prior Approval** for any activity undertaken by Landowner necessitated by virtue of fire, flood, acts of God or any other emergency reasonably deemed by Landowner to exist; provided, however, after such an event, Landowner shall notify the Department of any such damage as soon as practicable if damage occurs to the Conservation Values.
5. Any notice, demand, request, consent, approval or communication that either party Desires or is required to give to the other shall be in writing and either served personally or sent by registered or certified mail, return receipt requested, or delivered by courier, or personal delivery service, or email with confirmation received, addressed as follows:

To Landowner: The Vital Ground Foundation, Inc.
20 Fort Missoula Rd.
Missoula, MT 59804

To Department: Department of Fish, Wildlife & Parks
Attention: Administrator, Wildlife Division
1420 E. Sixth Avenue
P.O. Box 200701
Helena, MT 59620-0701

With a copy to:
Department of Fish, Wildlife & Parks

Attention: Regional Supervisor
490 N. Meridian Rd.
Kalispell, MT 59901

or to such other address as the parties from time to time shall designate by written notice to the others. The parties shall provide each other current contact information, including phone numbers and email addresses. All notices which are so addressed and paid for shall be deemed effective when personally delivered, or, if sent by courier or mailed, on the earlier of receipt or five business days after deposit thereof with a courier or mail service, return receipt requested.

H. ENFORCEMENT

1. Description of Violation. Any of the following shall constitutes a violation of this Easement:

- a.** Landowner fails to cure the violation within 30 days after the Department sends notice; or
- b.** Under circumstances where the violation cannot reasonably be cured within a 30-day period, Landowner fails to begin curing the violation within the 30-day period (or within 30 days of notice from the Department, Landowner fails to agree with the Department in writing on a date by which efforts to cure such violation will reasonably begin); or
- c.** Landowner fails to continue diligently to cure such violation until finally corrected.

2. Remedies. If a violation occurs, the Department shall have the following remedies available to it:

- a. Notice to Cure.** If the Department determines that Landowner has violated the terms of this Easement, or if Landowner undertakes any activity requiring approval of the Department without first obtaining such approval, the Department shall give written notice to Landowner of the violation and demand corrective action sufficient to cure the violation, and, when the violation involves injury to the Land resulting from any use or activity inconsistent with the terms of this Easement, to restore the portion of the Land so damaged.
- b. Exception to Notice to Cure.** If the Department, in its sole discretion, determines that a violation is threatened or imminent and that circumstances require immediate action to prevent or mitigate significant damage to the Conservation Values, the Department may pursue its remedies under this Section II.H without prior notice to Landowner or without waiting for the period provided for cure to expire.

c. Court Action. The Department may bring an action at law or in equity in a court of competent jurisdiction to enforce the terms of this Easement. The Department may seek to enjoin the violation, by temporary or permanent injunction, to require the restoration of the Land to the condition that existed prior to any such injury, and, if restoration is not possible to fully compensate for injury to the Conservation Values, to recover monetary damages for to which it may be entitled for violation of the terms of this Easement.

d. The Department's rights under this provision apply equally in the event of either actual or threatened violation of the terms of this Easement.

e. Landowner agrees that the Department's remedies at law for any violation of the terms of this Easement are alone inadequate. Accordingly, the Department is entitled to the injunctive relief. If injunctive relief is inadequate to restore the Conservation Values as a result of a violation and to compensate the Department and the public for the loss and damage to the Department's rights, the Department shall be entitled to recover damages for violation of the terms of this Easement or injury to any Conservation Value protected by this Easement, including without limitation damages for the loss of scenic, aesthetic or natural resource values. Without limiting Landowner's liability therefor, the Department, in its sole discretion, may apply any damages recovered to the cost of undertaking any corrective action on the Land.

f. The Department's remedies described in this Section II.H.2 are cumulative and are in addition to all remedies available at law or in equity.

g. Nothing contained in this Easement may be construed to entitle the Department to bring any action against Landowner for any injury to or change in the Land resulting from causes beyond Landowner's control, including, without limitation, fire, flood, storm, and natural earth movement, or from any prudent action taken to prevent, abate, or mitigate significant injury to the Land resulting from such causes.

3. Non-Waiver. Enforcement of the terms of this Easement is at the discretion of the Department, and any forbearance by the Department to exercise its rights under this Easement in the event of any violation of any term of this Easement by Landowner may not be deemed or construed to be a waiver by the Department of that term or of any subsequent violation of the same or any other term of this Easement. No delay or omission by the Department in the exercise of any right or remedy upon any breach by Landowner may impair the right or remedy or be construed as a waiver, nor may any forbearance or delay give rise to a claim of laches, estoppel or prescription.

4. Costs and Attorneys' Fees. Costs of restoration of the Conservation Values that are attributable to Landowner's violation or violation of the terms of this Easement shall be

borne by Landowner, unless a court orders otherwise or unless the parties mutually agree to share such costs. In the event of litigation concerning the terms of this Conservation Easement, each side shall bear its own costs and attorneys' fees.

5. Mediation. If a dispute arises between Landowner and the Department concerning interpretation of the meaning of this Easement or concerning the consistency of any proposed use or activity with the terms or purposes of this Easement, and if Landowner agrees in writing not to proceed with the use or activity pending resolution of the dispute, either Landowner or the Department may refer the dispute to mediation by request made in writing to the other party. Within 10 business days of receipt of such referral, Landowner and the Department will select an impartial, certified civil mediator who shall conduct the mediation and thereby assist the parties in resolving the dispute cooperatively. Each party shall pay an equal share of the mediator's fee. In referring any matter arising under this Easement to mediation, Landowner and the Department agree that mediation offers an alternative to the expense and time required to resolve disputes by litigation and is therefore often preferable to litigation. Nevertheless, mediation pursuant to this Paragraph shall be voluntary, and this mediation provision shall not be interpreted as precluding or limiting the parties from seeking legal or equitable remedies available under this Section II.H.

I. HOLD HARMLESS AND INDEMNITY

Landowner shall hold harmless and indemnify the Department and its employees, agents, and contractors from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands, or judgments, including without limitation, reasonable attorneys' fees, arising from or in any way connected with injury to or the death of any person, or physical damage to any property, resulting from any act, omission, condition, or other matter related to or occurring on or about the Land, as a result of the negligence or willful misconduct of Landowner or its agents, employees or contractors, unless due to the negligence or willful misconduct of the Department or its agents, employees or contractors. Nothing herein shall create any indemnity obligation by Landowner to the Department for any hunter, angler or recreational user of the property, unless such loss or injury is due to the negligence or willful misconduct of Landowner or its agents, employees or contractors.

The Department similarly agrees to hold harmless and indemnify Landowner and its employees, agents and contractors from and against all liabilities, penalties, costs, losses, damages, expenses, causes of action, claims, demands or judgments, including without limitation, reasonable attorneys' fees, arising from or in any way connected with injury to or the death of any person or physical damage to any property, resulting from any action, omission, condition, or other matter related to or occurring on or about the Land, as a result of the Department's exercise of its rights granted under this Easement, unless due to the negligence or willful misconduct of Landowner or their agents, employees or contractors.

J. TERMINATION, EXTINGUISHMENT, CONDEMNATION, REIMBURSEMENT

This Easement constitutes a real property interest immediately vested in the Department. It is the unequivocal intention of the parties that the purposes of this Easement are carried out in perpetuity. If, however, circumstances arise in the future that render the purposes of this Easement impossible to accomplish, this Easement can only be terminated or extinguished, whether in whole or in part, by judicial proceedings in a court of competent jurisdiction. The parties agree that changed economic conditions may not be considered as circumstances justifying the modification, termination or extinguishment of this Easement.

If this Easement is extinguished by judicial proceedings or should any interest in the Land be taken by the exercise of the power of eminent domain or acquired by purchase in lieu of condemnation with the **Prior Approval** of the Department, the Department is entitled to a proportional share of the proceeds of any sale, exchange or involuntary conversion of the Land formerly subject to this Easement. Landowner and the Department shall act jointly to recover the full value of the property interests in the Land subject to the taking or in lieu purchase and all direct costs or incidental damages to which each is entitled.

For the purposes of this paragraph, the ratio of the value of the Easement to the value of the Land unencumbered by the Easement remains constant as determined as of the date of this grant. The parties agree that this ratio is 78%, as was determined by independent appraisal at the time of the grant of this Easement, and the parties further agree that the value of any future interest of the Department will not include any value attributable to authorized improvements to the Land made by Landowner after the date of this grant. Therefore, in the event of any whole or partial judicial extinguishment, or eminent domain or purchase in lieu of condemnation, Landowner shall be entitled to receive from the financially liable party 22% percent of the unencumbered value of the real property and the Department shall be entitled to receive 78% percent of the unencumbered value of the real property. The Department shall use all such proceeds that it receives in a manner consistent with the purposes of this Easement.

K. ASSIGNMENT

This Easement is transferable, but the Department may assign this Easement only to an organization that is a qualified organization at the time of transfer under § 170(h) of the Internal Revenue Code of 1986, as amended (or any successor provision then applicable), and the applicable regulations promulgated thereunder, and authorized to acquire and hold conservation easements under the laws of the State of Montana. As a condition of any assignment, the Department shall require that the Conservation Values and purposes of this Easement are carried out in perpetuity.

L. AMENDMENT

If circumstances arise under which an amendment to or modification of this Easement would be appropriate as set forth in the Department's Amendment Policy, Landowner and the Department are free to jointly amend this Easement; provided that no amendment may be allowed that will affect compliance with or the qualification of this Easement under any applicable laws, including § 76-6-101, *et seq.*, MCA, or § 170(h) of the Internal Revenue Code, as amended. Any

amendment must be consistent with the purposes of this Easement, may not affect its perpetual duration, and either must enhance, or must have no effect on, the Conservation Values which are protected by this Easement. Furthermore, any amendment must not result in prohibited inurement or private benefit to Landowner or any other party. Any Easement amendment must be in writing, signed by both parties, and recorded in the public records of Lincoln County.

M. RECORDING

The Department shall record this instrument in a timely fashion in the official records of Lincoln County and may re-record it at any time as may be required to preserve its rights under this Easement.

N. REPRESENTATIONS AND WARRANTIES

Landowner represents and warrants that, after reasonable investigation and to the best of its knowledge:

1. Landowner has clear title to the Land; Landowner has the right to convey this Easement; the Land is free and clear of any encumbrances, except those encumbrances that have been expressly approved by the Department; and the person signing this Easement has full authority to sign on behalf of Landowner and to bind Landowner to this Easement.
2. Any handling, transportation, storage, treatment or use of any substance defined, listed, or otherwise classified pursuant to any federal, state or local law, regulation or requirement as hazardous, toxic, polluting or otherwise contaminating to the air, water or soil, or in anyway harmful or threatening to human health or the environment, that has occurred on the Land prior to the date of this Easement has been in compliance with all applicable federal, state, and local laws, regulations and requirements. No deposit, disposal or other release of any hazardous substance has occurred on or from the Land, in violation of applicable law.
3. No underground storage tanks are located on the Land, whether presently in service or closed, abandoned, or decommissioned, and no underground storage tanks have been removed from the Land in a manner not in compliance with the applicable federal, state and local laws, regulations and requirements.
4. Landowner and the Land are in compliance with all federal, state, and local laws, regulations and requirements applicable to the Land and its use.
5. No pending or threatened litigation exists in any way affecting, involving or relating to the Land, other than the ongoing statewide adjudication of water rights in Montana.
6. No civil or criminal proceedings or investigations have been instigated at any time or are now pending, and no notices, claims, demands, or orders have been received, arising out of any violation or alleged violation of, or failing to comply with, any federal, state, or local

law, regulation, or requirement applicable to the Land or its use, nor do there exist any facts or circumstances that Landowner might reasonably expect to form the basis for any such proceedings, investigations, notices, claims, demands, or orders.

O. GENERAL PROVISIONS

1. **Controlling Law.** The interpretation and performance of this Easement will be governed by the laws of the State of Montana. Venue for any court action to enforce the terms of this Easement shall lie in Lewis & Clark County.
2. **Construction.** Any general rule of construction to the contrary notwithstanding, this Easement must be liberally construed in favor of the grant to effect the purposes of this Easement and the policy and purposes of § 76-6-101, *et seq.*, MCA. If any provision in this instrument is found to be ambiguous, an interpretation consistent with the purposes of this Easement that would render the provision valid must be favored over any interpretation that would render it invalid.
3. **Entire Agreement.** This instrument sets forth the entire agreement of the parties with respect to this Easement and supersedes all prior discussions, negotiations, understandings, representations and agreements relating to the Easement, all of which are merged into this Easement. No alteration or variation of this instrument shall be valid or binding unless contained in an amendment that complies with Section II.L above.
4. **No Forfeiture.** Nothing contained in this Easement will result in a forfeiture or reversion of Landowner's title in any respect.
5. **Successors.** This Easement is binding upon, and inures to the benefit of the parties and their successors and assigns, and continues as a servitude running in perpetuity with the Land.
6. **Termination of Rights and Obligations.** A party's rights and obligations under this Easement terminate upon transfer of the party's interest in the Easement or Land, except that liability for acts or omissions occurring prior to transfer survive transfer.
7. **Severability.** If any provision of this Easement is found to be invalid, the remainder of the provisions of this Easement remain in effect.
8. **Subordination.** No provision of this Easement is to be construed as impairing the ability of Landowner to use the Land as collateral for any loan, provided that any mortgage or lien arising after the date of execution of this Easement shall be subordinate to this Easement.
9. **Subsequent Deeds and Instruments.** The Landowner agrees that reference to this Easement will be made in any subsequent purchase and sale agreements, deeds, leases or other legal instruments conveying an interest in the Land.

10. Counterparts. This Easement may be executed in counterparts which, taken together, shall constitute one and the same instrument.

11. Section Headings. Section headings are for convenience only and will not be given effect in interpretation of this Easement.

TO HAVE AND TO HOLD unto the Department, its successors and assigns FOREVER.

IN WITNESS WHEREOF, Landowner and the Department have set their hands on the day and year first above written.

GRANTED BY: THE VITAL GROUND FOUNDATION, INC.

By: _____
Ryan Lutey
Its Executive Director

STATE OF MONTANA)
) ss:
COUNTY OF _____)

This instrument was signed before me on _____, 2020, by Ryan Lutey, who is the Executive Director of The Vital Ground Foundation, Inc.

[SEAL] _____
Notary Public

ACCEPTED BY: MONTANA DEPARTMENT OF FISH, WILDLIFE AND PARKS

By: _____
Martha Williams, Director

STATE OF MONTANA)
) ss:
COUNTY OF LEWIS AND CLARK)

This instrument was signed before me on _____, 2020, by Martha Williams,
who is the Director of Montana Department of Fish, Wildlife & Parks.

Notary Public

[SEAL]

EXHIBIT A

LEGAL DESCRIPTION OF THE WILD RIVER DEED OF CONSERVATION EASEMENT

Township 32 North, Range 34 West, P.M.M., SW $\frac{1}{4}$ of Section 9:

Lots 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16 and 17 of Wild River Estates, according to the plat thereof on file in the office of the Clerk and Recorder, Lincoln County, Montana. Plat 6788; and

Lots 18A and 19A of the Amended Plat of Boundary Line Adjustment Lot 1 of Leighty Acres Plat No. 4243 and Lots 18 and 19 of Wild River Estates Plat No. 6788, according to the plat thereof on file in the office of the Clerk and Recorder, Lincoln County, Montana. COS No. 4546 RB.

END OF EXHIBIT A

**EXHIBIT B
MAP OF THE LAND**

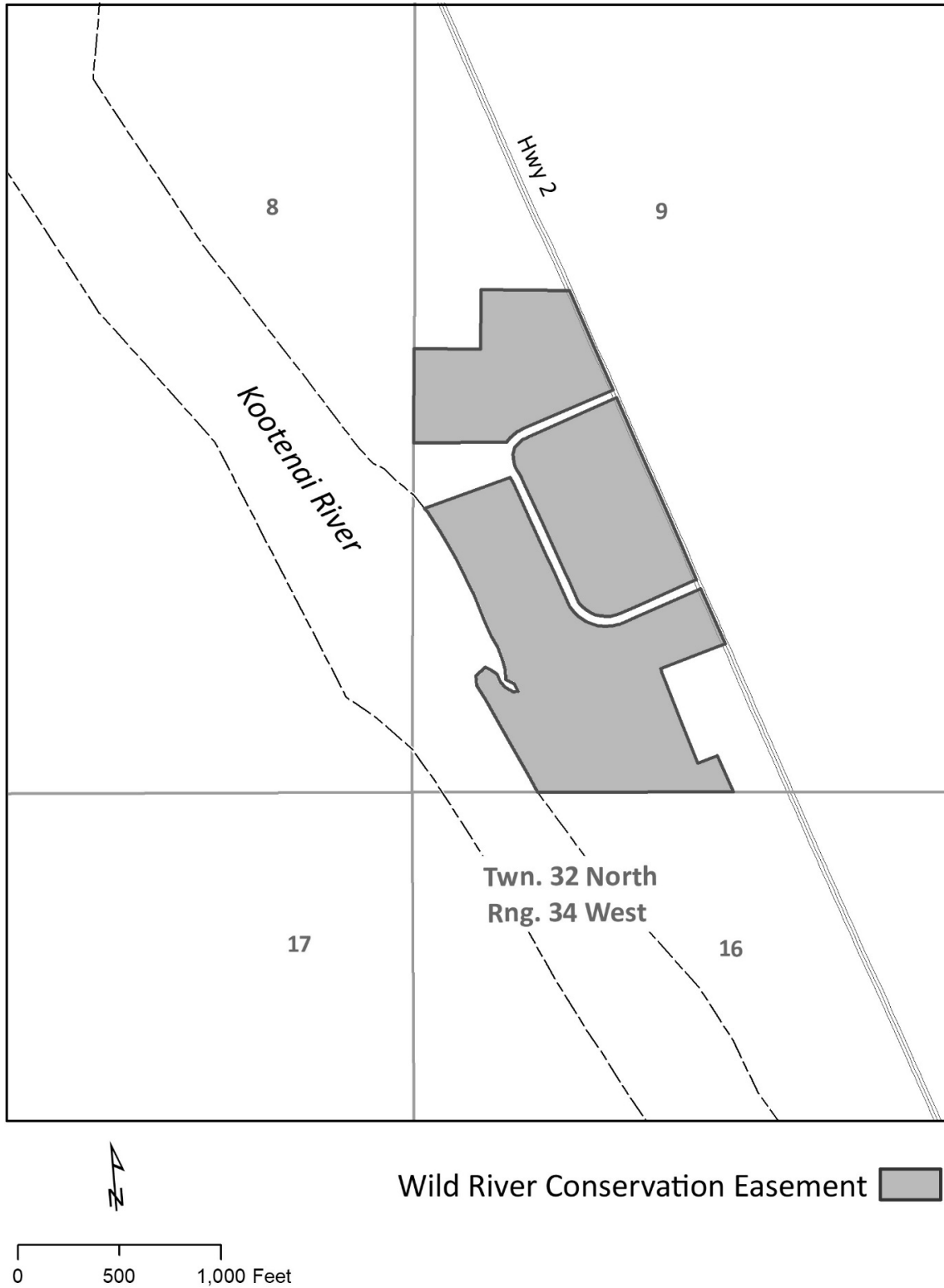


EXHIBIT C
MAP OF BUILDING AREA AND DESIGNATED ACCESS POINT

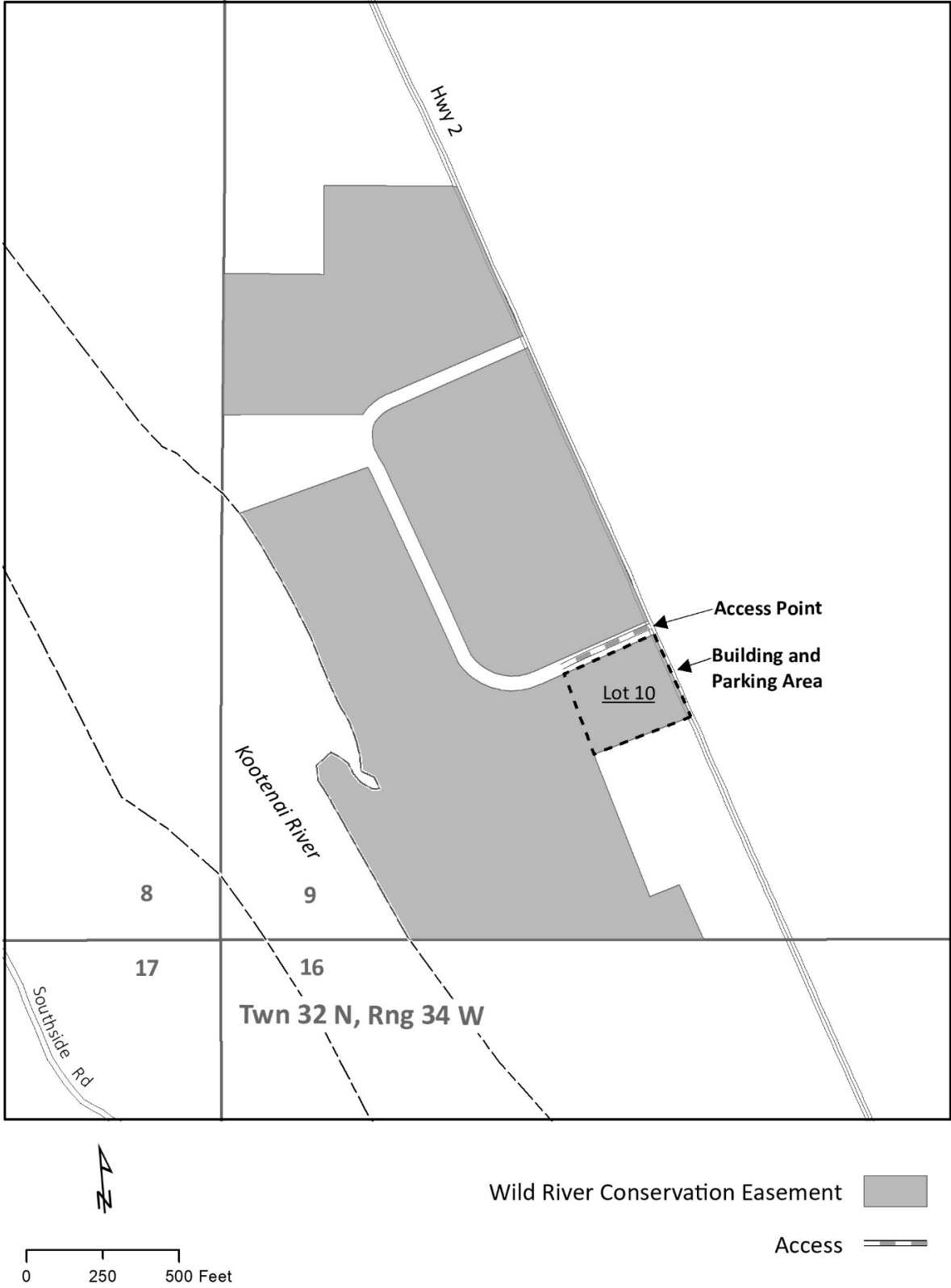


EXHIBIT D

WATER RIGHTS

No known water rights appurtenant to the Land at the time of execution of this Easement.

END OF EXHIBIT D

APPENDIX B

Vital Ground Property Management Plan
Wild River Estates
Lincoln County, MT



December 13, 2019

Kali Becher, Land Steward

The Vital Ground Foundation

20 Fort Missoula Rd.

Missoula, MT 59804-7202

406-549-8560

www.vitalground.org

with input from Montana Fish, Wildlife and Parks

1) Property Details

- a. **Montana Geocodes:** 56-4391-09-2-01-58-0000; 56-4391-09-2-01-26-0000; 56-4391-09-2-01-30-0000; 56-4391-09-2-01-14-0000; 56-4391-09-2-01-22-0000; 56-4391-09-2-01-36-0000; 56-4391-09-2-01-18-0000; 56-4391-09-2-01-54-0000; 56-4391-09-2-01-38-0000; 56-4391-09-2-01-40-0000; 56-4391-09-2-01-42-0000; 56-4391-09-2-01-44-0000; 56-4391-09-2-01-48-0000; 56-4391-09-2-01-50-0000
- b. **Acquisition date:** Phase 1 (lots 5, 8, 9, 10, 15, 16, 17) September 29, 2017; Phase 2 (lots 6, 7, 11, 13, 14) November 14, 2018; Phase 3 (lots 18A, 19A) December 11, 2019
- c. **Method of acquisition:** Fair market value, fee-title acquisition from multiple landowners
- d. **Property size:** 51.8 acres
- e. **Property location** (see locator map)
 - i. Nearest town: Troy, MT (Lincoln County)
 - ii. Legal description: Lots 5-11 & 13-17, Section 9, Township 32 North, Range 34 West
 - iii. Lat./Long: 48.548870, -115.964788
 - iv. Approximate elevation: 1,880 ft
- f. **Physical description:** The property is generally a level, alluvial terrace with a steep drop to a lower alluvial terrace with a gradual slope to the bank along the Kootenai River. The upper alluvial terrace is mostly an open, level field with a small forested area near Highway 2. The lower alluvial terrace is about 30 feet wide at the northern end and widens to nearly 400 feet at the southern end of the property, spanning from the edge of the Kootenai River to a steep embankment leading to the upper terrace. The lower terrace above bankfull is open with patches of riparian shrubs and trees. The aspect is generally southwest. Average precipitation for the city of Troy, Montana is about 25.5 inches per year and the average annual temperature is 46.3 degrees Fahrenheit.
- g. **Access to property:** This 51.8-acre property is located about seven miles northwest of Troy, Montana near the confluence of the Kootenai and Yaak Rivers. Meadow Drive provides access to the property. It is an ungated, gravel road that makes a loop through the property and turns back toward the highway. The road was one of the improvements made on the property after it was subdivided and it accesses the purchased lots.
- h. **Forest stewardship or other existing plans:** A separate vegetation restoration plan has been developed to help guide noxious weed treatment and restoration of native plant species in the upland area and a separate one will be developed for the riparian area on the property. All activities must comply with the conservation easement held by Montana Fish, Wildlife, and Parks. If a conflict arises between the conservation easement and the management plan, the conservation easement takes precedence.

- i. **Previous land use(s):** There is evidence of historic timber harvest on the forested section of the property near Highway 2 and the corner of Meadow Drive. The upper terrace was historically used for agricultural purposes, likely either grazing or hay, and may have been cleared of trees for this use.
The Wild River Estates subdivision was platted in 2008, but never fully developed. The only infrastructure put in place was a main road and electrical utility boxes. These improvements may be removed, with appropriate approval from the Lincoln County planning office and the utility company.
- j. **Legal information:** A number of legal documents associated with the subdivision pertain to the purchased property, including a utility easement, road right of way easement across lots 16 and 17, road maintenance agreement, and noxious weed plan. Vital Ground placed the property under a conservation easement on [DATE], held by Montana Fish, Wildlife and Parks (FWP). Vital Ground may enter into a hay production lease that would cover the upper terrace.



2) Current status of species targeted for conservation

One endangered and three threatened species listed under the Endangered Species Act (ESA) occupy and/or move through this proposed project area: the endangered white sturgeon (*Acipenser transmontanus*) and the threatened grizzly bear (*Ursus arctos horribilis*), Canada lynx (*Lynx canadensis*), and bull trout (*Salvelinus confluentus*). The property also provides linkage and habitat for the proposed threatened wolverine (*Gulo gulo*). Northwest Montana is considered a major stronghold for Canada lynx and wolverine.

The Cabinet-Yaak grizzly bear population is currently listed under the Endangered Species Act as a threatened species. The property is within the Cabinet-Yaak Grizzly

Bear Recovery Zone and in an identified priority linkage area for the Selkirk-Cabinet-Purcell Ecosystems. There are an estimated 40-50 bears believed to be in the Cabinet-Yaak Recovery Zone.

The factors affecting grizzly bears and other wide-ranging species such as Canada lynx, wolverine, and fisher in northwest Montana are largely related to human development, in particular loss of seasonal habitat due to development on private lands in the lowlands. There is recent evidence indicating that the Cabinet-Yaak grizzly population is fairly isolated genetically, potentially only being sustained due to efforts by the USFWS and FWP to augment the population. Therefore, protecting linkage areas is important in order to improve connectivity between grizzly bear recovery zones. Sanitation is another issue of concern, as grizzly bears and other carnivores come into conflict at private residences seeking food rewards from garbage and other attractants that are not properly secured and sanitation-related mortalities have occurred in the past.

The Wild River project area also supports potential seasonal habitat as well as connectivity habitat for listed threatened Canada lynx, and wolverine (a species proposed for listing as threatened). Canada lynx core habitat and identified critical habitat areas are located just north of the project area and descend almost down to Highway 2. Local biologists believe the project area could lie within home ranges of local lynx occupying the adjacent Purcell Mountains. Wolverine have also been documented in both the Purcell and Cabinet Mountains in Idaho and Montana and recently in the south end of the West Cabinets in Idaho. Fisher may also occasionally occupy the project area as Wild River is located just across the river from the West Cabinets, an area of relatively high-density fisher occurrence in both Montana and Idaho. A conservation easement would help maintain this travel corridor in perpetuity for these and other mid-sized carnivores.

Riparian areas provide important habitat for a variety of aquatic and terrestrial species, including birds, amphibians, and a variety of mammals. Riparian habitat provides forage and hiding and thermal cover for mammals, which also makes it important for providing movement corridors. In addition, these streamside areas play an important role in aquatic systems and are vital for healthy fish habitat. Riparian habitat is an important but threatened habitat type, largely due to development on private land. The Wild River property is adjacent to the Kootenai River and includes important riparian habitat (approximately 8 acres). The Kootenai River is important habitat for two threatened and endangered species: white sturgeon and bull trout. This section of the river provides important rearing habitat for white sturgeon and is critical habitat for bull trout, which spawn in nearby creeks. There are currently major efforts in North Idaho, Montana, and Canada to recover white sturgeon, and this property was identified as highly suitable for both in-channel and riparian habitat restoration to provide benefits to both bull trout and white sturgeon.

3) Adjacent land uses

- a. Kootenai National Forest: The Kootenai National Forest manages its land in accordance with a multiple use mandate. The Forest Service lands border the Wild River property to the northwest, south, and across the Kootenai River.
- b. Private Residential: The private property adjacent to the Wild River property are previously sold Wild River Estates lots. The property owners to the north are Brady and Bobbie Marken, who own six and a half acres with a house that is near the northwestern corner of the Wild River property. The nine-acre parcel across the highway from the property, to the north, is owned by the Nystroms and used for residential purposes.
- c. Developed Private Residential: Lot 12 is a 2.5-acre lot owned by Sharon Hamilton. It has one residential structure and is bordered by the Wild River Property to the north, east, and south.
- d. Private Conservation Land: There is a 90-acre parcel across the highway that is also owned by The Vital Ground Foundation for the purpose of protecting grizzly bear habitat. The property is undeveloped, and the lower field near the highway has been used for agricultural purposes recently, while the upper forested portion has been managed for weeds and forest health.

4) Special management considerations/restrictions

- a. Pursuant to Vital Ground's Fee Title Stewardship Policies, the organization has determined that most of the existing improvements on the property do not have a programmatic use and may be removed, as long as permission is granted from the electricity utility company Northern Lights and Lincoln County. One utility box may be kept for restoration purposes.
- b. The Vital Ground Foundation placed a conservation easement on the property on [DATE], which is held by FWP.
- c. Public access is permitted below high-water mark in accordance with Montana Stream Access Laws. Above high-water mark, non-motorized access is allowed.

5) Conservation goals, management objectives and management actions

- a. **Conservation goal:** Maximize the effectiveness of the property as secure seasonal grizzly bear habitat and as a linkage to larger blocks of protected wildlife habitat.
 - i. Management Objective—Restore the property to an undeveloped state
 1. Management Action: Remove electrical boxes when they are not needed to support restoration efforts and sections of Meadow Drive that are not needed for neighbors to access their property.
 - ii. Management Objective—Minimize conflicts between humans and grizzly bears
 1. Management Actions:
 - Limited non-motorized public access will be allowed.

- The property will be posted and monitored against unauthorized uses.
 - iii. Management Objective—Minimize opportunities for mistaken identification of grizzly bears to occur during bear hunting season.
 - 1. Management Action: Bear hunting is not allowed on the property.
- b. **Conservation goal:** Maintain and restore ecological health of the land to support a diverse array of native flora and fauna.
 - i. Management Objective—Protect and restore native vegetation and maintain the property’s usefulness for wildlife.
 - 1. Management Actions:
 - Native plant restoration will be initiated and will continue until native vegetation can be maintained with little more than annual, limited weed treatment. Methods of noxious weed control may include mechanical, chemical, and biological tools.
 - Leasing the hay ground on a short-term basis to help reduce noxious weed cover while maintaining some cover and forage beneficial to wildlife.
 - Plantings of trees and small shrubs, especially those species favored by grizzly bears, will be planted in the riparian area and upland in order to improve the species diversity, overstory cover, and habitat quality and to reduce the presence of noxious weeds.
 - Restore in-stream habitat and hydrology in order to establish better functioning riparian habitat and native plants.
 - Maintain forest health through periodic thinning to maintain health and vigor of trees and reduce wildfire risk. Standing dead trees will be left for wildlife habitat as long as they do not pose a risk to public safety.
- c. **Conservation goal:** Provide opportunities for conservation education and wildlife viewing activities that will not conflict with the property’s usefulness to grizzly bears.
 - i. Management Objective—Maintain positive relations with adjacent landowners, partner agencies, and local community.
 - 1. Management Actions:
 - Maintain communication and collaboration with local organizations such as the Yaak Valley Forest Council, The Yellowstone to Yukon Conservation Initiative, Kootenai National Forest, and FWP in order to pursue possible opportunities for outdoor education groups to visit the property.

- Develop interpretive signage explaining the importance of living with wildlife practices.
 - Keep reaching out to neighbors and finding ways to prevent conflicts between bears and people.
- ii. Management Objective—Provide opportunities for low-impact public access and wildlife viewing.

ACTIVITY	PERMITTED	PROHIBITED	CONDITIONS
Public access for non-consumptive activities	X		
Public access for fishing	X		
Motorized Public Access		X	
Camping		X	
Hunting—Bear		X	
Hunting—Other Carnivores		X	
Hunting—Deer and Elk		X	
Hunting—Waterfowl	X		May be permitted with written permission only, if above high-water mark
Hunting—Upland Bird		X	
Trapping		X	

6) Management funding and costs

As the landowner, Vital Ground is responsible for costs of management.

7) Partnerships with other agencies and interested parties

The Yellowstone to Yukon Initiative provided funding to help purchase this property, and FWP provided funding to help pay for the transaction costs associated with the purchase.

FWP holds a conservation easement on the property and is working in partnership with Vital Ground to implement a stream restoration project on the site.

8) Recommended monitoring schedule and areas of special emphasis

Vital Ground land staff will conduct at least two monitoring visits semi-annually.

However, these visits may occur more frequently during the specific management activities at this location or at the nearby Yaak Mountain property.

9) FWP involvement in the CE and management plan and updates to the management plan

Annual monitoring will be conducted by FWP or a designated third party and will involve meeting with Vital Ground and completing field reviews to assess Management Plan effectiveness and to review Vital Ground's compliance with the terms of the Easement. Vital Ground is encouraged to thoroughly familiarize themselves with the Management Plan, the terms in the Easement and to contact FWP with any questions or concerns to

prevent non-compliance. Any amendment to this management plan must have the consent of all parties and must be in writing and signed and acknowledged by the parties. If there is any inconsistency between the terms of this management plan and the Easement, the terms of the Easement control. FWP will keep a current management plan in their files and will make it available to successors in interest to the property.

Preparer's Signature

Prepared By: Kali Becher, Land Steward, The Vital Ground Foundation

Signature: _____

Date: _____

Fish, Wildlife, and Parks Approval:

Signature: _____

Date: _____

Site Pictures



Picture 1: field within loop road, largely covered with knapweed and agricultural grasses.



Picture 2: Streamside near small back channel



Picture 3: Forested portion of property, near highway.



Picture 4: Riparian area, northern portion



Picture 5: Turkey in field



Picture 6: Upland portion, hay meadow and forest



Picture 7: Back channel near Kootenai River and riparian area



Picture8: Inundated section of back channel, southern portion



Picture 9: Aerial picture of Wild River Estates, Phase 1, 2, and 3